

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

MICHAEL W. SMITH

PLAINTIFF

v.

CIVIL ACTION NO. 2:12-cv-00075-GHD

GAIL JACO and KIMBERLY D. CHRESTMAN

DEFENDANTS

MEMORANDUM OPINION DENYING
DEFENDANT KIMBERLY D. CHRESTMAN'S MOTION TO FILE COUNTERCLAIM

In the case *sub judice*, which is a property dispute case between *pro se* Plaintiff Michael W. Smith ("Plaintiff") and *pro se* Defendants Gail Jaco and Kimberly D. Chrestman ("Defendants"), Defendant Kimberly D. Chrestman has filed a motion to file counterclaim [99] against Plaintiff for aggravated assault and domestic violence. Plaintiff has not filed a response to the motion. Upon due consideration, the Court finds that the motion must be denied for the reasons stated below.

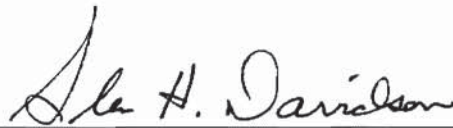
This case was filed on May 1, 2012. Defendant Kimberly D. Chrestman filed her motion to file counterclaim [99] on September 16, 2014. The trial in this matter is presently set for December 1, 2014. In the opinion of this Court, Defendant Kimberly D. Chrestman's motion to file counterclaim [99] must be denied and her counterclaim must be dismissed as untimely. Defendant Kimberly D. Chrestman did not seek leave to assert the counterclaim until more than two years after this suit was filed, despite a long history with Plaintiff and knowledge of his alleged aggravated assaults and domestic violence against her. Further, as the purported counterclaim does not arise from the facts and occurrences of this case, allowing Defendant Kimberly D. Chrestman to assert her counterclaim at this late juncture in the proceeding would

necessitate additional discovery and delay the trial date. The Court finds that given all of the foregoing, dismissal of the purported counterclaim is proper.

Therefore, Defendant Kimberly D. Chrestman's motion to file counterclaim [99] is DENIED, and the purported counterclaim is DISMISSED.

An order in accordance with this opinion shall issue this day.

THIS, the 20th day of October, 2014.

A handwritten signature in cursive script, appearing to read "A. H. Davidson".

SENIOR UNITED STATES DISTRICT JUDGE